

INCOME TAX : Where director of assessee-company surrendered a certain sum during search, and Assessing Officer treated said sum as income from unexplained sources and invoked provisions of section 115BBE and charged tax at a higher rate, since Assessing Officer had not pointed out any unexplained credit in books of account, provisions of sections 68, 69, 69A, 69B, 69C and 69D were not attracted on surrendered amount and aforesaid surrender not being covered under provisions of sections 68, 69, 69A, 69B, 69C and 69D, provisions of section 115BBE were not attracted

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[2021] 128 taxmann.com 406 (Chandigarh - Trib.)

IN THE ITAT CHANDIGARH BENCH 'A'

Bajaj Sons Ltd.

v.

Deputy Commissioner of Income-tax, Central Circle-III, Ludhiana*

SANJAY GARG, JUDICIAL MEMBER

AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

IT APPEAL NO. 1127 (CHD) OF 2019

[ASSESSMENT YEAR 2017-18]

MAY 24, 2021

Section [115BBE](#) of the Income-tax Act, 1961 - Tax on income referred to in section 68 to section 69D (General) - Assessment year 2017-18 - A search and seizure action was carried out at premises of assessee-company as well as residential premises of its directors - Director of assessee-company surrendered a certain amount on account of unexplained cash - Further, an additional sum of Rs. 15 lakhs was also surrendered - Assessing Officer treated said additional income as income from unexplained sources and invoked provisions of section 115BBE and charged tax at a higher rate - It was found that Assessing Officer had not pointed out any unexplained credit in books of account in this respect and surrender of Rs. 15 lakhs that had been offered to cover up discrepancies in respect of likely disallowances of claims, if any, relating to its business income - Whether since aforesaid surrender was not covered under provisions of sections 68, 69, 69A, 69B, 69C and 69D, provisions of section 115BBE were not attracted and Assessing Officer was directed to compute said surrendered income under normal provisions as applicable to business income of assessee - Held, yes [Paras 8 and 9] [In favour of assessee]

Sarbjit Garg, CA *for the Appellant.* Smt. C. Chandra Kanta , CIT *for the Respondent.*

ORDER

Sanjay Garg, Judicial Member. - The present appeal has been preferred by the assessee against the order dated 27-5-2019 of the Commissioner of Income-tax (Appeals)-5, Ludhiana [hereinafter referred to as 'CIT(A)'].

2. In this appeal the assessee has taken following grounds of appeal:—

"1. (a) That the Ld. CIT(A) has erred in law and facts of the case by upholding the taxation of

income surrendered u/s 115BBE, despite the fact that it did not fall u/s 68, section 69, section 69A, section 69B, Section 69C or section 69D and was reflected under the head 'Income from business or profession' in the return of income filed by the assessee.

(b) That the Ld. CIT(A) has erred in law and facts of the case by upholding the taxation of income surrendered u/s 115BBE, despite the fact that it has not been assessed by the Ld. AO u/s 68, section 69, section 69A, section 69B, section 69C or section 69D

(c) The assessee craves right to take any other ground at the time of hearing or to amend/alter/delete any of the grounds of appeals."

2.1 The assessee through the above ground of appeal has agitated the action of the lower authorities in invoking the provision of section 115BBE of the Income-tax Act on the surrendered income of Rs. 15 lacs and thereby assessing the said income at a higher rate as against the normal rate of taxation applicable to business income.

3. The brief facts relevant to the issue are that a search & seizure action was carried out at the premises of the assessee as well as the residential premises of its Directors which was concluded on 30-1-2017.

4. During the search operation, statement of Shri Surinder Pal Bajaj, the Director of the assessee, Bajaj Sons Ltd. was recorded u/s 132(4), during which he surrendered an amount of Rs. 89.61 lacs on account of unexplained cash found at his premises. Further, a sum of Rs. 7.50 lacs was also surrendered subsequently. Therefore, a sum of Rs. 97.11 lacs was surrendered upon which due taxes have been paid by Shri S.P. Bajaj. Further an additional sum of Rs. 15 lacs was also surrendered stating as under:

"Further, in order to cover any discrepancy, found during the course of search or in paper seized during the course thereof, a sum of Rs. 15 lakhs are offered to tax for the A.Y. 2017-18 in the hand of M/s Bajajsons Limited."

5. However, the assessee company did not disclose the aforesaid surrendered amount in the return of income. On being shown caused by the AO in this respect, the assessee revised its return and offered additional income of Rs. 15 lacs as its business income. However, the AO treated the aforesaid income as income from unexplained sources and invoked the provisions of Section 115 BBE and charged the tax at a higher rate.

6. On being aggrieved on the invocation of provision of section 115BBE, assessee preferred appeal before the CIT(A) but remained unsuccessful.

7. Before us, the ld. counsel for the assessee has submitted that neither any incriminating material nor any unexplained expenditure was found during the search action in respect of the aforesaid Rs. 15 lacs surrendered by the assessee company. That the amount of Rs. 15 lacs was surrendered as business income to cover up any discrepancy in the accounts relating to the allowances or disallowances etc.; that may be made by the AO while assessing the business income. He, therefore, has submitted that action of the AO in invocation of the provisions of section 115BBE was not justified. The ld. DR on the other hand has relied upon the findings of the lower authorities.

8. We have considered the rival submissions and gone through the record. For the sake of ready reference, the relevant provisions of section 115BBE are reproduced hereunder :

"115BBE. (1) Where the total income of an assessee,—

- (a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

- (b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a), the income-tax payable shall be the aggregate of—
- (i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and
- (ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).]

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance (or set off of any loss] shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) [and clause (b)] of sub-section (1).]

We find that a separate surrender of Rs. 97.11 lacs has been made by Shri SB Bajaj Director of the assessee company on account of unexplained cash found during the search action. However, so far as the surrender of Rs. 15 lac to cover any discrepancy is concerned, the AO has not pointed out any unexplained credit in the books of account, any unexplained investment, any unexplained money, bullion or jewellery, any unexplained expenditure or any amount of loan repaid in the assessment order in this respect. Therefore, the provisions of section 68, 69, 69A, 69B, 69C and 69D are not attracted on the surrendered amount of Rs. 15 lacs. The said amount of Rs. 15 lacs was offered in case any discrepancy is found in the books of account. However, in actual neither any unexplained investment nor any unexplained expenditure or otherwise any unexplained asset was found during the search action so far as the aforesaid surrender of Rs. 15 lacs was concerned. In these circumstances, the aforesaid surrender of Rs. 15 lacs can be said to have been offered to cover up the discrepancies in respect of likely disallowances of claims, if any, relating to its business income.

9. In view of this, since the aforesaid surrender is not covered under the provisions of section 68, 69, 69A, 69B, 69C and 69D, the provisions of section 115BBE are not attracted in this case.

10. In view of the above, the action of the lower authorities in invoking provisions of section 115BBE on the surrender income of Rs. 15 lacs is *set aside* and the AO is directed to compute the said surrendered income under normal provisions as applicable to the business income of the assessee.

11. In the result, appeal of the assessee stands allowed.

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*In favour of assessee.